

### REMARKS

The Office Action requires that Applicant elect one Group from Groups I-VIII. Applicant respectfully requests reconsideration of the Restriction Requirement in view of the following remarks concerning the election made herein.

Restriction between inventions is only proper when a search burden exists for the Examiner to search all the inventions claimed. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. See MPEP §803.01.

In the instant case, Groups I, II, III, IV, V, VI, VII, and VIII are all drawn to products and methods of use relating to interferon  $\alpha$ -21 (IFN $\alpha$ -21). For instance, Groups I, IV, and VI are drawn to the IFN $\alpha$ -21 polynucleotide (nucleic acid), IFN $\alpha$ -21 polypeptide (proteins), and antibodies directed against the IFN $\alpha$ -21 polypeptide. The IFN $\alpha$ -21 nucleic acid encodes the IFN $\alpha$ -21 polypeptide which is used to make the antibody, therefore all three products are inexorably linked by structure and function. The method of Group V is similarly linked as it uses IFN $\alpha$ -21 polypeptides. Therefore, it does not constitute a search burden to search for the polynucleotide which encodes the polypeptide which in turn has antibodies specific for it, as searching for one will lead to the other (MPEP §803.04).

Furthermore, Groups I, II, and III all involve the IFN $\alpha$ -21 polynucleotides of Group I, therefore a search of the polynucleotides of Group I would lead to the product of Group II and the method of Group III and *vice versa*. Groups IV, V, and VIII all involve the IFN $\alpha$ -21 polypeptides of Group I, therefore a search of the polypeptides of Group IV would lead to the methods of Group V and VIII and *vice versa*. Groups VI and VII both involve the antibodies of Group VI, therefore a search of the antibodies of Group VI would lead to the method of Group VII and *vice versa*. Therefore, it does not constitute a search burden to search for the polynucleotide, polypeptide, and antibodies together, as searching for any of these three products would lead to their methods of use. See MPEP §803.04.

For example, the polypeptides of Group IV and Group V are both IFN $\alpha$ -21 polypeptides encoded by the polynucleotides of Group I. Therefore the polypeptides of Group IV and V are inexorably linked by structure and function to the polynucleotide of Group I which encodes for them. Therefore, it does not constitute a search burden to search for the polynucleotide which

encodes the polypeptide, as searching for one will lead to the other and its methods of use. See MPEP §803.04.

In addition, Groups I, III, and VIII share the same class (435), Groups II and V share the same class (514), Groups IV and VI share the same class (530). Therefore, it is evident from the overlapping subject matter and class/subclass that a search of Groups I, II, III, IV, V, VI, VII, and VIII does not constitute a serious search burden for the Examiner.

Applicant respectfully requests that the Restriction Requirement be withdrawn and that all claims be prosecuted in the same patent application. In the event that the requirement is made final and in order to comply with 37 C.F.R. § 1.143, Applicant reaffirms the election with **traverse** of Group IV (claims 83-102) and the election with **traverse** of SNP K179E, holding claims 1-82 and 103-113 in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

**CONCLUSION**

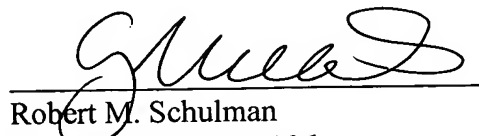
Applicant maintains that the restriction requirement is improper and that all pending claims, *i.e.*, claims 1-113, should be examined for patentability. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's representatives, in person or over the telephone, we would welcome the opportunity to do so.

Respectfully submitted,

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